

1 HANA HILSEN RATH  
2 .OLIVER HILSEN RATH  
3 822 Eastbrook Court  
4 Danville, CA 94506  
5 Telephone: 925 212 6299  
6 Facsimile: 925 736 7571  
7 ohlx@sbcglobal.net

8 PLAINTIFFS IN PRO PER

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 HANA HILSEN RATH et al,

12 Plaintiffs,

13 v.

14 THE SWISS CONFEDERATION et al,

15 Defendants.

Case No. C-07-2782 WHA

DECLARATION OF HANA AND OLIVER  
HILSEN RATH RE PROOF OF SERVICE  
OF DOC'S 6,7 & 8 ON THE SWISS  
CENTRAL AUTHORITY PURSUANT TO  
HAGUE CONVENTION AND ORDER OF  
THIS COURT

16 We, Hana and Oliver Hilsenrath, plaintiffs in pro per declare  
17 the following to be true under penalty of perjury:

18 Defendants Swiss Confederation et al were properly served with  
19 true copies of Orders 6, 7 and 8 of this Court, pursuant to the  
20 order of this court and according to the Hague Convention.

21 Defendants were served by registered mail and facsimile as  
22 presented in the attachment of this declaration.

23 Dated: June 15, 2007

24 Respectfully submitted,

25 \_\_\_\_\_/s\_\_\_\_\_  
26

27 HANA HILSEN RATH

\_\_\_\_\_/s\_\_\_\_\_  
28

OLIVER HILSEN RATH

**Hana Hilsenrath, Oliver Hilsenrath**  
**822 Eastbrook Court, Danville CA 94506**  
**Tel: +1 925 212 6299, Fax: +1 925 736 7571**  
**Email: [hana@hlsn.com](mailto:hana@hlsn.com)**

**Attorneys of Record In Propria Persona**

# Fax

<b>To:</b>	<b>Federal Justice Department</b>	<b>From:</b>	<b>Hana and Oliver Hilsenrath</b>
<b>Fax:</b>	<b>011-41-31-322-5380</b>	<b>Pages:</b>	<b>19</b>
<b>Phone:</b>	<b>011-41-31-322-4310</b>	<b>Date:</b>	<b>6/16/2007</b>
<b>Re:</b>	<b>CASE No C 07 2782 MMC</b>	<b>CC:</b>	<b>[Click here and type name]</b>

☐ **Urgent**    ☐ **For Review**    ☐ **Please Comment**    ☐ **Please Reply**    ☐ **Please Recycle**

• **Comments:** Attached Court Orders in the above Case.

Also sent by US Registered Mail.

**Hana Hilsenrath, Oliver Hilsenrath**  
**822 Eastbrook Court, Danville CA 94506**  
**Tel: +1 925 212 6299, Fax: +1 925 736 7571**  
**Email: ohlx@sbcglobal.net**

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**Attorneys of Record *In Propria Persona***

June 15, 2007

**Federal Justice and Police Department, Federal Office for Police Matters,  
International Judicial and Extrajudicial Assistance,  
Bundesrain 20, 3003 Bern,  
Switzerland,  
Tel. 011-41-31-322-4310,  
Fax 011-41-31-322-5380**

**RE: Proceedings in the Federal Court of San Francisco No C 07 2782 MMC**

Dear Madam or Sir,

We hereby present a package of documents with the request to serve the persons and entities listed in attachment to this letter on the subject of the legal proceedings in federal court in San Francisco - California.

Please note that the abovementioned case was transferred to Judge William H. Alsup.

The attached order states that a Case Management Conference was scheduled on **August 30, 2007 at 11:00 a.m.**, before the Honorable William Alsup.

The parties shall report to Courtroom 9, on the 19th Floor, United States Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102.

Not less than seven days prior, counsel shall submit a joint case management conference statement not to exceed ten pages.

All other deadlines in the initial case management scheduling order filed on May 29, 2007 remain in effect.

We are much obliged, and thank you in advance for your courtesy,

\_\_\_\_\_/s\_\_\_\_\_  
Hana Hilsenrath

\_\_\_\_\_/s\_\_\_\_\_  
Oliver Hilsenrath

**ANNEX TO FORM USM-94**

**ADDRESSES OF DEFENDANTS IN CASE NO. C 07 2782 MMC  
FOR THE PURPOSE OF SERVICE OF COMPLAINT**

**DEFENDANT 1: THE SWISS CONFEDERATION**

Bundesrain 20, 3003 Bern,  
Switzerland,  
Tel. 011-41-31-322-4310,  
Fax 011-41-31-322-5380

**DEFENDANT 2: THE FEDERAL ATTORNEY GENERAL OF  
SWITZERLAND**

Bundesrain 20, 3003 Bern,  
Switzerland,  
Tel. 011-41-31-322-4310,  
Fax 011-41-31-322-5380

**DEFENDANT 3 : GERARD SAUTEBIN**

Office des juges d'instruction fédéraux  
Rue du Mont-Blanc 4  
Case postale 1795  
CH - 1211 Genève 1  
Tel: +41 22 906 90 20,  
Fax. +41 22 906 90 21,

**DEFENDANT 4: BRENT HOLTKAMP**

Taubenstrasse 16  
Bern, CH-3003  
Tel: +41 31 322 0662  
Fax: +41 31 322 0503

U.S. Department of Justice  
United States Marshals Service



## REQUEST FOR SERVICE ABROAD OF JUDICIAL OR EXTRAJUDICIAL DOCUMENTS

DEMANDE  
AUX FINS DE SIGNIFICATION OU DE NOTIFICATION À L'ÉTRANGER  
D'UN ACTE JUDICIAIRE OU EXTRAJUDICIAIRE

**Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, November 15, 1965.**

*Convention relative à la signification et à la notification à l'étranger des actes judiciaires ou extrajudiciaires en matière civile ou commerciale, signée à La Haye, le 15 novembre 1965.*

**Identity and address of the applicant**  
*Identité et adresse du requérant*

HANA HILSENATH, OLIVER HILSENATH  
822 Eastbrook Court, Danville, CA 94506, USA  
Tel: +1 925 212 6299, Fax: +1 925 736 7571  
email: ohlx@sbcglobal.net  
PLAINTIFFS IN PROPRIA PERSONA

**Address of receiving authority**  
*Adresse de l'autorité destinataire*

Federal Justice and Police Department,  
Federal Office for Police Matters, International  
Judicial and Extrajudicial Assistance,  
Bundesrain 20, 3003 Bern, Switzerland,  
Tel. +41-31-322-4310, Fax +41-31-322-5380

**The undersigned applicant has the honour to transmit – in duplicate – the documents listed below and, in conformity with article 5 of the above-mentioned Convention, requests prompt service of one copy thereof on the addressee, i.e., (identity and address)**

*Le requérant soussignée a l'honneur de faire parvenir – en double exemplaire – à l'autorité destinataire les documents ci-dessous énumérés, en la priant, conformément à l'article 5 de la Convention précitée, d'en faire remettre sans retard un exemplaire au destinataire, à savoir:*

*(identité et adresse)*

1. SWISS CONFEDERATION; 2. SWISS FEDERAL ATTORNEY GENERAL;  
3. GERARD SAUTEBIN; 4. BRENT HOLTkamp -- SEE ADDRESSES IN ANNEX

☒ (a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention.\*  
*a) selon les formes légales (article 5 alinéa premier, lettre a).*

☐ (b) in accordance with the following particular method (sub-paragraph (b) of the first paragraph of article 5)\*:  
*b) selon la forme particulière suivante (article 5, alinéa premier, lettre b) :*

☐ (c) by delivery to the addressee, if he accepts it voluntarily (second paragraph of article 5)\*:  
*c) le cas échéant, par remise simple (article 5, alinéa 2).*

**The authority is requested to return or to have returned to the applicant a copy of the documents and of the annexes with a certificate as provided on the reverse side.**

*Cette autorité est priée de renvoyer ou de faire renvoyer au requérant un exemplaire de l'acte - et de ses annexes - avec l'attestation figurant au verso.*

List of documents  
Énumération des pièces

1. DOC NO 6 -- CASE NO. C 07 2782 MMC  
2. DOC NO 7 -- CASE NO. C 07 2782 MMC  
3. DOC NO 8 -- CASE NO. C 07 2782 MMC

Done at SAN FRANCISCO, the 15 JUNE 2007  
Fait à \_\_\_\_\_, le \_\_\_\_\_

Signature and/or stamp  
*Signature et/ou cachet*

HANA AND OLIVER HILSENATH

\*Delete if inappropriate  
*Rayer les mentions inutiles.*

Form USM-94  
Est. 11/77

(Formerly OBD-116, which was formerly LAA-116, both of which may still be used)

# **CERTIFICATE ATTESTATION**

The undersigned authority has the honour to certify, in conformity with article 6 of the Convention.  
L'autorité soussignée a l'honneur d'attester conformément à l'article 6 de ladite Convention.

1) that the document has been served \*

1) que la demande a été exécutée

– the (date) -- le (date)

– at (place, street, number) - à (localité, rue, numéro)

-- in one of the following methods authorized by article 5:

-- dans une des formes suivantes prévues à l'article 5:

☐ (a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention\*.  
a) selon les formes légales (article 5, alinéa premier, lettre a)

☐ (b) in accordance with the following particular method:  
b) selon la forme particulière suivante:

☐ (c) by delivery to the addressee, who accepted it voluntarily.\*  
c) par remise simple.

The documents referred to in the request have been delivered to:

Les documents mentionnés dans la demande ont été remis à:

- (identity and description of person)

- (Identité et qualité de la personne)

- relationship to the addressee family, business or other

- liens de parenté de subordination ou autres avec le destinataire de l'acte:

2) that the document has not been served, by reason of the following facts\*:

2) que la demande n'a pas été exécutée, en raison des faits suivants:

In conformity with the second paragraph of article 12 of the Convention, the applicant is requested to pay or reimburse the expenses detailed in the attached statement\*

Conformément à l'article 12, alinéa 2, de ladite Convention, le requérant est prié de payer ou de rembourser les frais dont le détail figure au mémoire ci-joint.

## **ANNEXES**

Annexes

Documents returned:

Pieces renvoyées

In appropriate cases, documents establishing the service:

Le cas échéant, les documents justificatifs de l'exécution:

Done at \_\_\_\_\_, the  
Fait à \_\_\_\_\_, le \_\_\_\_\_

Signature and/or stamp  
Signature et/ou cachet

**SUMMARY OF THE DOCUMENT TO BE SERVED**  
**ÉLÉMENTS ESSENTIELS DE L'ACTE**

**Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, November 15, 1965.**

*Convention relative à la signification et à la notification à l'étranger des actes judiciaires ou extrajudiciaires en matière civile ou commerciale, signée à La Haye, le 15 novembre 1965.*

**(article 5, fourth paragraph)**  
*(article 5, alinéa quatre)*

**Name and address of the requesting authority:**

*Nom et adresse de l'autorité requérante:*

DISTRICT COURT, SAN FRANCISCO, CALIFORNIA, 450 GOLDEN GATE AVE

---

**Particulars of the parties:**

*Identité des parties:*

PLAINTIFFS FOR THE HILSEN RATH FAMILY VERSUS DEFENDANTS- ALL MEMBERS OF SWISS GOV

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**JUDICIAL DOCUMENT**  
**ACTE JUDICIAIRE**

**Nature and purpose of the document:**

*Nature et objet de l'acte:*

COURT ORDERS DOCUMENTS 6, 7 & 8 IN CASE NO C 07 2782 WHA

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**Nature and purpose of the proceedings and, where appropriate, the amount in dispute:**

*Nature et objet de l'instance, le cas échéant, le montant du litige:*

CASE REASSIGNMENT AND ORDERS DOC'S 6,7&8

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**Date and place for entering appearance:**

*Date et lieu de la comparution:*

SAN FRANCISCO, 450 GOLDEN GATE AVE., CLERK OF COURT, NO LATER THAN JULY 29, 2007

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**Court which has given judgment\*\*:**

*Jurisdiction qui a rendu la décision:*

SAN FRANCISCO FEDERAL DISTRICT COURT - JUDGE WILLIAM H. ALSUP

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**Date of judgment\*\*:**

*Date de la décision:*

JUNE 11, 2007

---

**Time limits stated in the document\*\*:**

*Indication des délais figurant dans l'acte:*

CASE MANAGEMENT CONFERENCE AUGUST 30, 2007,

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**EXTRAJUDICIAL DOCUMENT**  
**ACTE EXTRAJUDICIAIRE**

**Nature and purpose of the document:**

*Nature et objet de l'acte:*

---

**Time limits stated in the document\*\*:**

*Indication des délais figurant dans l'acte:*

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**RELATED CASE ORDER**

A Motion for Administrative Relief to Consider Whether Cases Should be Related or a *Sua Sponte* Judicial Referral for Purpose of Determining Relationship (Civil L.R. 3-12) has been filed. The time for filing an opposition or statement of support has passed. As the judge assigned to the earliest filed case below that bears my initials, I find that the more recently filed case(s) that I have initialed below are related to the case assigned to me, and such case(s) shall be reassigned to me. Any cases listed below that are not related to the case assigned to me are referred to the judge assigned to the next-earliest filed case for a related case determination.

**CR03-00213 WHA**    **USA v. Hilsenrath, et al**

**C 07-02782 MMC**    **Hilsenrath et al v. The Swiss Confederation et al**

I find that the above case is related to the case assigned to me.    WHA

**ORDER**

Counsel are instructed that all future filings in any reassigned case are to bear the initials of the newly assigned judge immediately after the case number. Any case management conference in any reassigned case will be rescheduled by the Court. The parties shall adjust the dates for the conference, disclosures and report required by FRCivP 16 and 26 accordingly. Unless otherwise ordered, any dates for hearing noticed motions are vacated and must be re-noticed by the moving party before the newly assigned judge; any deadlines set by the ADR Local Rules remain in effect; and any deadlines established in a case management order continue to govern, except dates for appearance in court, which will be rescheduled by the newly assigned judge.

Dated: June 11, 2007




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Judge William H. Alsup



**CERTIFICATE OF SERVICE**

I certify that on the date stated below, I lodged a copy of this order with each judicial officer and I mailed a copy to each counsel of record or *pro se* party in the cases listed above.

**Richard W. Wicking, Clerk**

**DATED: June 11, 2007**

**By:**



**Deputy Clerk**

Copies to: Courtroom Deputies  
Case Systems Administrators  
Counsel of Record  
Entered into Assignment Program \_\_\_\_\_ (date)

United States District Court  
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

HANA HILSEN RATH, et al.,  
Plaintiff,

No. C 07-02782 WHA

v.

THE SWISS CONFEDERATION, et al.,  
Defendant.

**CLERK'S NOTICE SCHEDULING  
INITIAL CASE MANAGEMENT  
CONFERENCE ON REASSIGNMENT**

(Plaintiff shall serve a copy of this notice on any party in the above-entitled action not appearing on the Notice of Electronic Filing or Other Case Activity and/or the attached Certificate of Service)

YOU ARE NOTIFIED THAT the Court has scheduled an Initial Case Management Conference for **August 30, 2007 at 11:00 a.m.**, before the Honorable William Alsup. Please report to Courtroom 9, on the 19th Floor, United States Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102. Not less than seven days prior, counsel shall submit a joint case management conference statement not to exceed ten pages. All other deadlines in the initial case management scheduling order filed on May 29, 2007 remain in effect.

Parties requesting a continuance shall submit a stipulation and proposed order. If the parties are unable to reach a stipulation, the requesting party shall submit an ex parte application with a proposed order.

Dated: June 11, 2007

FOR THE COURT,

Richard W. Wieking, Clerk

By: 

Dawn K. Toland  
Courtroom Deputy to the  
Honorable William Alsup

Last revised April 9, 2007.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**SUPPLEMENTAL ORDER TO  
ORDER SETTING INITIAL CASE MANAGEMENT CONFERENCE  
IN CIVIL CASES BEFORE JUDGE WILLIAM ALSUP**

**INTRODUCTION**

The purpose of this supplemental order is to guide the parties on recurring practical questions that arise prior to trial and to impose certain requirements for the conduct of the case. Counsel must please read this order and follow it.

**SERVICE OF THIS ORDER**

1. For cases originating in this Court, plaintiff(s) must serve this order and the order setting the initial case management conference (along with any other required pleadings) on each defendant. For cases removed from state court, the removing defendant(s) must serve this order and the order setting the initial case management conference (along with any other required pleadings) immediately on each and every party that has previously appeared or that appears within thirty days after removal. Thereafter, any existing party to the action that brings a new party into the action must immediately serve a copy of this order and the order setting the initial case management conference (along with any other required pleadings) on the new party.

**CASE MANAGEMENT CONFERENCE**

2. The parties will please address the standardized items in the court-wide format for the joint case management statement. This is available at the Standing Order For all Judges of the Northern District of California — Contents of Joint Case Management Statements. Please file (electronically or manually depending on your case) at least **SEVEN CALENDAR DAYS** prior to the case management conference.

3. Each party shall be represented at the case management conference by counsel (preferably lead counsel) prepared to address all such matters and with authority to enter stipulations and to make admissions.

4. Pursuant to FRCP 26(d), no formal discovery shall be initiated by any party until after the meet-and-confer session required by FRCP 26(f), except by stipulation or prior court order. As soon as a party has notice of this order, however, the party shall take such affirmative steps as are necessary to preserve evidence related to the issues presented by the action, including, without limitation, interdiction of any document-destruction programs and any ongoing erasures of e-mails, voice mails, and other electronically-recorded material.

**ELECTRONIC CASE FILING — LODGING HARD COPIES WITH CHAMBERS**

5. In all “E-Filing” cases, in addition to filing papers electronically, the parties are required to lodge for chambers one paper copy of each document that is filed electronically. These printed copies shall be marked “Chambers Copy — Do Not File” and shall be in an envelop clearly marked with the judge’s name and case number. It shall be delivered to the Clerk’s office no later than noon on the day following the day that the papers were filed electronically. Parties shall *not file* a paper copy of any document with the Clerk’s Office that has already been filed electronically. For the final pretrial conference, please follow *Guidelines for Trial and Final Pretrial Conference In Civil Jury Cases Before the Honorable William Alsup*.

6. Any proposed order other than those routinely submitted in connection with regularly-noticed motions shall be sent by e-mail to “whapo@cand.uscourts.gov” in WordPerfect or Microsoft Word format (*never* PDF). **PLEASE** include the case name and

United States District Court  
For the Northern District of California

1 number on the "subject" line of the e-mail message. This address should *only* be used for such  
2 proposed orders.

3 **SETTING MOTIONS**

4 7. Counsel need not request a motion hearing date and may notice non-discovery  
5 motions for any Thursday (excepting holidays) at 8:00 a.m. Case management and final pretrial  
6 conferences will be set by the Court.

7 **FORM OF SUBMISSIONS**

8 8. On summary judgment motions, joint statements of undisputed facts are not  
9 required but are helpful if completely agreed upon. Please do *not* file separate statements of  
10 "undisputed facts."

11 9. Reply declarations are disfavored. Opening declarations should set forth all facts  
12 on points foreseeably relevant to the relief sought. Reply papers should not raise new points that  
13 could have been addressed in the opening.

14 10. The title of the submission must be sufficient to alert the Court to the relief  
15 sought; for example, please do not bury a request for continuance in the body of a memorandum.

16 11. All submissions filed with the Court shall include on the cover sheet the date and  
17 time of the hearing or conference. Counsel should include their facsimile transmission numbers  
18 along with their telephone numbers on their papers.

19 **DISCOVERY**

20 12. The following paragraphs on discovery provide counsel and the parties with  
21 views and guidelines of Judge Alsup so that they can plan accordingly. For good cause, the  
22 parties are invited to propose any modifications in their joint case management conference  
23 statement. Unless and until modified, however, the following provisions shall supplement the  
24 requirements of the Federal Rules of Civil Procedure and the local rules.

25 13. In responding to requests for documents and materials under FRCP 34, all parties  
26 shall *affirmatively state* in a written response the full extent to which they will produce materials  
27 and shall, promptly after the production, confirm in writing that they have produced *all* such  
28 materials so described that are locatable after a diligent search of *all* locations at which such

1 materials might plausibly exist. It is not sufficient to state that “responsive” materials will be or  
2 have been produced. Such a response leaves open the distinct possibility that other responsive  
3 materials have not been produced.

4 14. In searching for responsive materials in connection with FRCP 34 requests or for  
5 materials required to be disclosed under FRCP 26(a)(1), parties must search computerized files,  
6 e-mails, voice mails, work files, desk files, calendars and diaries, and any other locations and  
7 sources if materials of the type to be produced might plausibly be expected to be found there.  
8 The Court has found that certain basic information normally learned by counsel anyway should  
9 be made available to the other side at the time of production, as if it were a response to a  
10 standing interrogatory, as follows. At the time of the production, the responding party should  
11 provide a written list to the requesting party setting forth in detail each specific source and  
12 location searched. The list must also identify, by name and position, all persons conducting the  
13 search and their areas of search responsibility. The producing party shall also provide a list  
14 describing the specific source for each produced item as well as for each item withheld on a  
15 ground of privilege, using the unique identifying numbers to specify documents or ranges.  
16 Materials produced in discovery should bear unique identifying control numbers on each page.

17 15. To the maximum extent feasible, all party files and records should be retained  
18 and produced in their original form and sequence including file folders, and the originals should  
19 remain available for inspection by any counsel on reasonable notice.

20 16. Except for good cause, no item shall be received as case-in-chief evidence if the  
21 proponent has failed to produce it in response to a reasonable and proper discovery request  
22 covering the item, regardless of whether any discovery motion was made. A burden or  
23 overbreadth or similar objection shall not be a valid reason for withholding requested materials  
24 actually known to counsel or a party representative responsible for the conduct of the litigation.

25 17. Privilege logs shall be promptly provided and must be sufficiently detailed and  
26 informative to justify the privilege. *See* FRCP 26(b)(5). No generalized claims of privilege or  
27 work-product protection shall be permitted. With respect to each communication for which a  
28

1 claim of privilege or work product is made, the asserting party must at the time of assertion  
2 identify:

3 (a) all persons making or receiving the privileged or protected  
4 communication;

5 (b) the steps taken to ensure the confidentiality of the communication,  
6 including affirmation that no unauthorized persons have received the  
7 communication;

8 (c) the date of the communication; and

9 (d) the subject matter of the communication.

10 Failure to furnish this information at the time of the assertion will be deemed a waiver of the  
11 privilege or protection. The log should also indicate, as stated above, the location where the  
12 document was found.

13 18. Absent extraordinary circumstances, counsel shall consult in advance with  
14 opposing counsel and unrepresented proposed deponents to schedule depositions at  
15 mutually-convenient times and places. That some counsel may be unavailable shall not,  
16 however, be grounds for deferring or postponing a deposition if another attorney from the same  
17 firm or who represents a party with similar interests to that witness is able to attend. Ordinarily,  
18 if one side desires a prompt deposition, the other side is expected to agree to dates falling within  
19 *thirty days* of the request. On the other hand, rarely should one side expect the other side to  
20 agree to a deposition sooner than *seven days* of the request.

21 19. If any objection to a request for materials is overruled, and if the disputed request  
22 was due and pending at the time of a deposition, the withholding party or counsel must, at the  
23 request of any other party, re-produce all deponents under its control or represented by them for  
24 further deposition examination as to any new materials produced in response that are germane  
25 to that deponent and must bear the expense of doing so. A party objecting to producing  
26 requested materials may not use the existence of its own objections as a basis for postponing  
27 any deposition unless such party promptly meets and confers and then, if failing to reach an  
28 agreement, seeks to bring a prompt motion for a protective order.

United States District Court  
For the Northern District of California

1           20. Counsel and parties shall comply with FRCP 30(d)(1). Deposition objections  
2 must be as to privilege or form only. Speaking objections are prohibited. Under no  
3 circumstances should any counsel interject, "if you know," or otherwise coach a deponent.  
4 When a privilege is claimed, the witness should nevertheless answer questions relevant to the  
5 existence, extent or waiver of the privilege, such as the date of a communication, who made the  
6 statement, to whom and in whose presence the statement was made, other persons to whom the  
7 contents of the statement have been disclosed, and the general subject matter of the statement.  
8 Private conferences between deponents and attorneys in the course of examination, including a  
9 line of related questions, are improper and prohibited except for the sole purpose of determining  
10 whether a privilege should be asserted.

11           21. Deponents and their counsel must make a good-faith effort to prepare for  
12 depositions and to refresh witness memories on important matters in the suit about which the  
13 witness reasonably should be expected to have knowledge. Deponents who claim to lack  
14 recollection during their deposition but who later claim at trial to have had their memories  
15 refreshed in the interim, may be, among other things, impeached with their previous failures of  
16 recollection during their depositions or be subject to preclusion. In preparing deponents,  
17 defending counsel shall segregate and retain all materials used to refresh their memories and  
18 shall provide them to examining counsel at the outset of the deposition.

19           22. To the maximum extent feasible, deposition exhibits shall be numbered in a  
20 simple manner that will allow the same numbering at trial. In discovery, counsel shall agree on  
21 blocks of exhibit numbers to be used by the respective parties. Identical exhibits should not be  
22 re-marked, but various versions of the same document, such as copies with hand notes added,  
23 should be separately marked if used. *See* Local Rule 30-2(b)(3).

24           23. FRCP 26(a)(2)(B) requires disclosure of all opinions, bases, reasons and "other  
25 information considered" by an expert. Counsel shall preserve all drafts of expert reports (partial  
26 or complete) and notes and other evidence of communications with experts (or with any  
27 intermediaries between counsel and the experts) on the subject of this actual or potential  
28 testimony, and shall instruct their experts and any intermediaries to do likewise. All such



1 materials shall be produced upon expert designation (unless all parties otherwise stipulate in  
2 writing). This requirement does not apply to intermediate drafts prepared solely by the  
3 testifying expert not provided to or discussed with anyone else. Counsel's private notes of  
4 conversations will be treated as work product and need not be produced absent the showing  
5 required by FRCP 26(b)(3).

6 24. With respect to depositions under FRCP 30(b)(6), the fundamental purpose is to  
7 allow a party to notice a deposition by subject matter, thereby requiring the respondent to  
8 designate and to produce one or more organization witnesses knowledgeable on the designated  
9 topic, a useful procedure when the roles of percipient witnesses controlled by an adverse party  
10 are unknown. In some cases, however, counsel routinely appear to notice  
11 Rule 30(b)(6) depositions on numerous and wide-ranging topics, including even the basis for  
12 "contentions" made by adverse parties. To obviate disputes and to give guidance, these  
13 guidelines will be observed:

14 (a) Without a prior order increasing the limit, a party may seek  
15 Rule 30(b)(6) depositions from another party on up to a total of ten subject  
16 matters (for the entire case) described with "reasonable particularity." In framing  
17 the subjects, it is normally improper to ask for Rule 30(b)(6) deponents to testify  
18 concerning the entire basis of a claim or defense. On the other hand, examples of  
19 proper subjects, which would require the respondent to find and to produce  
20 knowledgeable deponents, include "the time line of research and development  
21 leading to the invention in question" or "the efforts undertaken by defendant to  
22 locate documents responsive to plaintiff's document request." The notice should  
23 be directed at discovering percipient facts in the possession of the adverse party,  
24 not at forcing a supposed "fact witness" to appear and defend the entire thesis of a  
25 claim or defense. If a notice includes an overbroad topic, the overbroad topic  
26 shall be unenforceable and may not be later replaced with a proper topic.

27 (b) Each witness-designee deposed for one half-day or more in a  
28 Rule 30(b)(6) deposition shall count as a single deposition for purposes of the

1 deposition limit under FRCP 26 or under any case management order setting a  
2 limit on the number of depositions. A corporate designee may, immediately after  
3 being deposed on the stated subject, be deposed in his or her individual capacity.  
4 Both such sessions shall count together as a single deposition (although they  
5 should be separately transcribed). If two designees, to take another example, are  
6 interrogated, each for one half-day or more, then they count as two depositions.

7 (c) If an organization cannot reasonably locate a witness to testify  
8 based on personal knowledge, there is no requirement under Rule 30(b)(6) for the  
9 organization to “woodshed” or to “educate” an individual to testify on the subject.  
10 If the organization does not produce any such deponent, however, the  
11 organization may not present case-in-chief evidence at trial or on summary  
12 judgment on that topic from any witness it could have so designated.

13 (d) Rule 30(b)(6) testimony never constitutes an irrebuttable judicial  
14 admission. It will normally, however, be evidence admissible against the  
15 organization producing the witness. The jury may, upon request, be instructed on  
16 the significance of the testimony under Rule 30(b)(6).

17 25. If a dispute arises during a deposition and involves either a persistent obstruction  
18 of the deposition or a refusal to answer a material question on a ground other than privilege,  
19 counsel may attempt to arrange a telephone conference with the Court through the courtroom  
20 deputy, Dawn Toland, at 415-522-2020. Any such conference should be attended by the same  
21 court reporter recording the deposition.

22 26. All other requests for discovery relief must first be summarized in a letter no  
23 longer than three pages from the party seeking relief after having met and conferred. Up to  
24 twelve pages of attachments may be added. In the letter, counsel should identify themselves in  
25 the signature block as “counsel for \_\_\_\_\_.” *The letter should be electronically-filed in*  
26 *the official file along with the discovery-dispute requests and responses, as well as any timely*  
27 *letter cancelling the hearing if settlement is reached.* Counsel may send (and manually file) their  
28 letters via the United States mail if their case is not an e-file case. (Please note that with all

1 communications with the Court by e-filing, *a hard copy must be lodged* in the Court's mail box  
2 in the Clerk's Office on the sixteenth floor no later than noon of the following day.) The Court  
3 will then advise the parties whether a response, written motion or a telephone conference or  
4 court hearing will be required. After the telephone conference or hearing, counsel should submit  
5 their proposed order (agreed as to form) by e-filing it and/or by United States mail. This  
6 paragraph applies only to cases wherein discovery is being supervised by the district judge rather  
7 than by a magistrate judge or special master.

#### 8 DISCLOSURES

9 27. Apart from discovery, Rule 26 requires certain automatic disclosures and requires  
10 them to be made in a timely manner. Under Rule 37(c), untimely-disclosed materials may not be  
11 used at trial or on summary judgment unless the delay in disclosure is "harmless" or unless  
12 "substantial justification" for the delay is shown.

#### 13 COMMUNICATIONS WITH CHAMBERS


14 28. Please do not send any letters to the Court (except for requests for discovery  
15 conferences, short cover letters for dismissals, orders agreed-upon as to form, or chambers  
16 copies of electronically-filed documents). When corresponding with the Court by letter, always  
17 identify whom you represent. Please do not fax or messenger anything to chambers without  
18 advance permission specific to the item. If you need to messenger a letter to the Court, please  
19 have it taken directly to the Clerk's Office. If you want the official file to be complete, you must  
20 either take your letter to the Clerk's Office on the sixteenth floor and request it to be filed in the  
21 official files, or mail it to the Clerk's Office for filing, or e-file it if the case is an e-filed case; the  
22 chambers staff is *not* responsible for filing your documents.

23 29. You may contact the courtroom deputy, Dawn Toland (on the sixteenth floor in  
24 the Clerk's Office), at 415-522-2020 with appropriate inquiries. Except for the letters described  
25 above, please do not attempt to make contact by telephone or any other *ex parte* means with  
26 chambers staff.

**CROSS REFERENCE TO OTHER STANDING ORDERS AND GUIDELINES**

30. The Court has separate standing guidelines for preparation for the final pretrial conference and trial. In securities cases, the Court has a standing order concerning early notice to class members. They are always available for review at the website for the United States District Court for the Northern District of California at [www.cand.uscourts.gov](http://www.cand.uscourts.gov).

Dated: April 9, 2007.

  
\_\_\_\_\_  
WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE

United States District Court  
For the Northern District of California

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**Fax-History Report** for  
Hana & Oliver Hilsenrath  
001 925 736 7571  
16 Jun 2007 13:16

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Federal Justice Department	USA

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